

THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958

NO.24 OF 1958
[28th August, 1958]

An Act to provide for the preservation of ancient and historical monuments and archaeological site and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects.

Comment: We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. *Rajeev Mankotia v. Secretary to the President of India*, AIR 1997 SUPREME COURT 2766

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:-

PRELIMINARY

1.Short title, extent and commencement.- (1) This Act may be called the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

(2) It extends to the whole of India, but sections 22, 24, 25 and 26 shall not apply to the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2.Definitions.- In this Act unless the context otherwise requires-,

(a) "ancient monuments" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

(i) the remains of an ancient monument.

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of, an ancient monument;

(b) "antiquity" includes-

(i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship.

(ii) any article, object or thing detached from a building or cave,

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages,

(iv) any article, object or thing of historical interest, and

(v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act.

which has been in existence for not less than one hundred years;

(c) "archaeological officer" means an officer of the Department of Archaeology of the Government of India not lower in rank than Assistant Superintendent of Archaeology;

(d) "archaeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes-

(i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and

(ii) the means of access to, and convenient inspection of, the area;

(e) "Director-General" means the Director-General of Archaeology, and includes any officer authorised by the Central Government to perform the duties of the Director-General;

(f) "maintain, with its grammatical variations and cognate expressions, includes the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient access thereto;

(g) "owner" includes-

(i) a joint owner invested with powers of management on behalf of himself and other joint owners and the successor-in-title of any such owner; and

(ii) any manager or trustee exercising powers of management and the successor-in-office of any such manager or trustee;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "protected area" means any archaeological site and remains which is declared to be of national importance by or under this Act;

(j) "protected monument" means an ancient monument which is declared to be of national importance by or under this Act.

ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS OF NATIONAL IMPORTANCE

3.Certain ancient monuments, etc., deemed to be of national importance.- All ancient and historical monuments and all archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), or by section 126 of the States Reorganisation Act, 1956 (37 of 1956), to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purposes of this Act.

4.Power of Central Government to declare ancient monuments, etc., to be of national importance.- (1) Where the Central Government is of opinion that any ancient monument or

archaeological site and remains not included in section 3 is of national importance, it may, by notification in the official Gazette, give two months' notice of its intention to declare such ancient monument or archaeological site and remains to be of national importance; and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be.

(2) Any person interested in any such ancient monument or archaeological site and remains may, within two months after the issue of the notification, object to the declaration of the monument, or the archaeological site and remains, to be of national importance.

(3) On the expiry of the said period of two months, the Central Government may after considering the objections, if any, received by it, declare by notification in the Official Gazette, the ancient monument or the archaeological site and remains, as the case may be, to be of national importance.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains to which it relates is of national importance for the purposes of this Act.

PROTECTED MONUMENTS

5.Acquisition of rights in a protected monument.- (1) The Director-General may, with the sanction of the Central Government, purchase, or take a lease of, or accept a gift or bequest of, any protected monument.

(2) Where a protected monument is without an owner, the Director-General may, by notification in the Official Gazette, assume the guardianship of the monument.

(3) The owner of any protected monument may, by written instrument, constitute the Director-General the guardian of the monument, and the Director-General the guardian of the monument, and the Director-General may, with the sanction of the Central Government, accept such guardianship.

(4) When the Director-General has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Director-General had not been constituted a guardian thereof.

(5) When the Director-General has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 6 shall apply to the written to agreements executed under the said sub-section.

(6) Nothing in this section shall affect the use of any protected monument for customary religious observations.

6.Preservation of protected monument by agreement.- (1) the Collector, when so directed by the Central Government, shall propose to the owner of a protected monument to enter into an agreement with the Central Government within a specified period for the maintenance of the monument.

(2) An agreement under this section may provide for all or any of the following matters, namely:-

(a) the maintenance of the monument:

(b) the custody of the monument and the duties of any person who may be employed to watch it;

(c) the restriction of the owner's right-

(i) to use the monument for any purpose,

(ii) to charge any fee for entry into, or inspection of, the monument,

(iii) to destroy, remove, alter or deface the monument, or

(iv) to build on or near the site of the monument;

(d) the facilitates of access to be permitted to the public or any section thereof or to archaeological officers or to persons deputed by the owner or any archaeological officer or the Collector to inspect or maintain the monument;

(e) the notice to be given to the Central Government in case the land on which the monument is situated or any adjoining land is offered for sale by the owner, and the right to be reserved to the Central Government to purchase such land, or any specified portion of such land, at its market value;

(f) the payment of any expenses incurred by the owner or by the Central Government in connection with the maintenance of the monument;

(g) the proprietary or other rights which are to vest in the Central Government in respect of the monument when any expenses are incurred by the Central Government in connection with the maintenance of the monument;

(h) the appointment of an authority to decide any dispute arising out of the agreement; and

(i) any matter connected with the maintenance of the monument which is a proper subject of agreement between the owner and the Central Government.

(3) The Central Government or the owner may, at any time after the expiration of three years from the date of execution of an agreement under this section, terminate it on giving six months' notice in writing to the other party:

Provided that where the agreement is terminated by the owner, he shall pay to the Central Government the expenses, if any, incurred by it on the maintenance of the monument during the five years immediately preceding the termination of the agreement or, if the agreement has been in force for a shorter period, during the period the agreement was in force.

(4) An agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates, from, through or under a party by whom or on whose behalf the agreement was executed.

7. Owners under disability or not in possession.- (1) If the owner of a protected monument is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 6.

(2) In the case of village property, the headman or other village-officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 6.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the person on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

8.Application of endowment to repair a protected monument.- (1) If any owner or other person competent to enter into an agreement under section 6 for the maintenance of a protected monument refuses or fails to enter into such an agreement, and if any endowment has been created for the purpose of keeping such monument in repair or for that purpose among other, the Central Government may institute a suit in the court of the district judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the district judge, for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the district judge may summon and examine the owner and any person whose evidence appears to him necessary and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were a decree of a civil court.

9.Failure or refusal to enter into an agreement.- (1) If any owner or other person competent to enter into an agreement under section 6 for the maintenance of a protected monument refuses or fails to enter into such an agreement, the Central Government may make an order providing for all or any of the matters specified in sub-section (2) of section 6 and such order shall be binding on the owner or such other person and on every person claiming title to the monument from, through or under, the owner or such other person.

(2) Where an order made under sub-section (1) provides that the monument shall be maintained by the owner or other person competent to enter into an agreement all reasonable expenses for the maintenance of the monument shall be payable by the Central Government.

(3) No order under sub-section (1) shall be made unless the owner or other person has been given an opportunity of making a representation in writing against the proposed order.

10.Power to make order prohibiting contravention of agreement under section 6.- (1) If the Director-General apprehends that the owner or occupier of a protected monument intends to destroy, remove, alter, deface, imperil or misuse the monument or to build on or near the site thereof in contravention of the terms of an agreement under section 6, the Director-General may, after giving the owner or occupier an opportunity of making a representation in writing, make an order prohibiting any such contravention of the agreement:

Provided that no such opportunity may be given in any case where the Director-General, for reasons to be recorded, is satisfied that it is not expedient or practicable to do so.

(2) Any person aggrieved by an order under this section may appeal to the Central Government within such time and in such manner as may be prescribed and the decision of the Central Government shall be final.

11.Enforcement of agreements.- (1) If an owner or other person who is bound by an agreement for the maintenance of a monument under section 6 refuses or fails within such reasonable time as the Director-General may fix, to do any act which in the opinion of the Director-General is necessary for the maintenance of the monument, the Director-General may authorise any person to do any such act, and the owner or other person shall be liable to pay the expenses of doing any such act or such portion of the expenses as the owner may be liable to pay under the agreement.

(2) If any dispute arises regarding the amount of expenses payable by the owner or other person under sub-section (1), it shall be referred to the Central Government whose decision shall be final.

12.Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner.- Every person who purchases, at a sale for arrears of land revenue or any other public demand, any land on which is situated a monument in respect of which any

instrument has been executed by the owner for the time being under section 5 or section 6, and every person claiming any title to a monument from, through or under, an owner who executed any such instrument, shall be bound by such instrument.

13.Acquisition of protected monuments.- If the Central Government apprehends that a protected monument is in danger of being destroyed, insured, misused, or allowed to fall into decay, it may acquire the protected monument under the provisions of the Land Acquisition Act, 1894 (1 of 1894), as if the maintenance of the protected monument were a public purpose within the meaning of that Act.

14.Maintenance of certain protected monuments.- (1) The Central Government shall maintain every monument which has been acquired under section 13 or in respect of which any of the rights mentioned in section 5 have been acquired.

(2) When the Director-General has assumed the guardianship of a monument under section 5, he shall, for the purpose, of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agents, subordinates and workmen, for the purpose of inspecting the monument and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

15.Voluntary contributions.- The Director-General may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him;

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

16.Protection of place of worship from misuse, pollution or desecration.- (1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.

(2) Where the Central Government has acquired a protected monument under section 13, or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of, a protected monument under section 5, and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provisions for the protection of such monument or part thereof, from pollution or desecration-

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

17.Relinquishment of Government rights in a monument.- With the sanction of the Central Government, the Director-General may,-

(a) where rights have been acquired by the Director-General in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish, by notification in the Official Gazette, the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or

(b) relinquish any guardianship of a monument which he has assumed under this Act.

18.Right of access to protected monuments.- Subject to any rules made under this Act, the

public shall have a right of access to any protected monument.

PROTECTED AREAS

19.Restrictions on enjoyment of property rights in protected areas.- (1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

20.Power to acquire protected area.- If the Central Government is of opinion that any protected area contains an ancient monument or antiquities of national interest and value, it may acquire such area under the provisions of the Land Acquisition Act, 1894 (1 of 1894), as if the acquisition were for a public purpose within the meaning of that Act.

ARCHAEOLOGICAL EXCAVATIONS

21.Excavations in protected areas.- An archaeological officer or an officer authorised by him in this behalf or any person holding a licence granted in this behalf under this Act (hereinafter referred to as the licensee) may, after giving notice in writing to the Collector and the owner, enter upon and make excavations in any protected area.

22.Excavations in areas other than protected areas.- Where an archaeological officer has reason to believe that any area not being a protected area contains ruins or relics of historical or archaeological importance, he or an officer authorised by him in this behalf may, after giving notice in writing to the Collector and the owner, enter upon and make excavations in the area.

23.Compulsory purchase of antiquities, etc., discovered during excavation operations.- (1) Where, as a result of any excavations made in any area under section 21 or section 22, any antiquities are discovered, the archaeological officer or the licensee, as the case may be, shall,-

(a) as soon as practicable, examine such antiquities and submit a report to the Central Government in such manner and containing such particulars as may be prescribed;

(b) at the conclusion of the excavation operations, give notice in writing to the owner of the land from which such antiquities have been discovered, of the nature of such antiquities.

(2) Until an orders for the compulsory purchase of any such antiquities is made under sub-section (3), the archaeological officer or the licensee, as the case may be, shall keep them in such safe custody as he may deem fit.

(3) On receipt of a report under sub-section (1), the Central Government may make an order for the compulsory purchase of any such antiquities at their market value.

(4) When an order for the compulsory purchase of any antiquities is made under sub-section (3), such antiquities shall rest in the Central Government with effect from the date of the order.

24.Excavations, etc., for archaeological purposes.- No State Government shall undertake or authorise any person to undertake any excavation or other like operation for archaeological purposes in any area which is not a protected area except with the previous approval of the Central Government and in accordance with such rules or directions, if any, as the Central Government may make or give in this behalf.

PROTECTION OF ANTIQUITIES

25.Power of Central Government to control moving of antiquities.- (1) If the Central Government considers that any antiquities or class of antiquities ought not to be moved from the place where they are without the sanction of the Central Government, the Central Government may, by notification in the Official Gazette, direct that any such antiquity or any class of such antiquities shall not be moved except with the written permission of the Director-General.

(2) Every application for permission under sub-section (1) Shall be in such form and contain such particulars as may be prescribed.

(3) Any person aggrieved by an order refusing permission may appeal t the Central Government whose decision shall be final.

26.Purchase of antiquities by Central Government.- (1) If the Central Government apprehends that any antiquity mentioned in a notification issued under sub-section (1) of section 25 is in danger of being destroyed, removed, injured, misused or allowed to fall into decay or is of opinion that, by reason of its historical or archaeological importance, it is desirable to preserve such antiquity in a public place, the Central Government may make an order for the compulsory purchase of such antiquity at its market value and the Collector shall thereupon give notice to the owner of the antiquity to be purchased.

(2) Where a notice of compulsory purchase is issued under sub-section (1) in respect of any antiquity, such antiquity shall vest in the Central Government with effect from the date of the notice.

(3) The power of compulsory purchase given by this section shall not extend to any image or symbol actually used for bona fide religious observations.

PRINCIPLES OF COMPENSATION

27.Compensation for loss or damage.- Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land by reason of any entry on, or excavations in, such land or the exercise of any other power conferred by this Act shall be paid compensation by the Central Government for such loss, damage or diminution of profits.

28.Assessment of market value or compensation.- (1) The market value of any property which the Central Government is empowered to purchase at such value under this Act or the compensation to be packed by the Central Government in respect of anything done under this Act shall, where any dispute arises in respect of such market value or compensation, be ascertained in the manner provided in sections, 3, 5, 8 to 34, 45 to 47, 51 and 52 of the Land Acquisition Act, 1894 (1 of 1894), so far as they can be made applicable:

Provided that, when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Central Government and one a person nominate by the owner, or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

(2) Notwithstanding anything contained in sub-section (1) or in the Land Acquisition Act, 1894 (1 of 1894), in determining the market value of any antiquity in respect of which an order for compulsory purchase is made under sub-section (3) of section 23 or under clause (b) of section 24 by reason of its being of historical or archaeological importance shall not be taken into consideration.

29. Delegation of powers. - The Central Government may, by notification in the Official Gazette, direct that